

Private Letter Ruling: Overpayment reported on a return that is credited against the subsequent year's estimated tax liability will not subsequently be recharacterized.

November 13, 2003

Dear:

This is in response to your letter dated November 10, 2003, in which you request a Private Letter Ruling on behalf of COMPANY1 and COMPANY2. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of 86 Ill. Adm. Code Section 1200.110 appears to be contained in your request. The Private Letter Ruling will bind the Department only with respect to COMPANY1 and COMPANY2 for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY1 nor COMPANY2, nor a taxpayer related to either of them, is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

The facts and analysis as you have presented them are as follows:

The purpose of this letter is to request a private letter ruling from the Illinois Department of Revenue (the "Department") pursuant to 2 Ill. Adm. Code 1200.110 on behalf of COMPANY1. COMPANY1 is a Delaware corporation with its principal place of business at STREET, CITY, Illinois ZIP CODE. At issue is whether a payment of Illinois income tax by COMPANY1 made under the amnesty program would affect certain overpayments of Illinois income tax that COMPANY1 has chosen to credit to its subsequent years' estimated Illinois income tax liability, as described more fully below.

#### BACKGROUND

COMPANY2 filed a combined Illinois income tax return on behalf of itself and its direct and indirect subsidiaries as required by section 502 of the Illinois Income Tax Act (the "IITA," 35 ILCS 5/101, et seq.) for 1999 and its short taxable year ended XX/XX/2000 ("TYE XX/XX/00"). COMPANY1 (COMPANY2's successor in interest in the merger of COMPANY2 with and into COMPANY1 on XX/XX/00) filed for each of calendar years 2000, 2001 and 2002 combined Illinois income tax returns on behalf of itself and its direct and indirect subsidiaries as required by IITA section 502.

COMPANY2 reported an overpayment of Illinois income tax in the amount of \$ on its 1999 Illinois income tax return, which amount it applied to its 2000 estimated Illinois income tax. COMPANY2 further reported an overpayment in the amount of \$ on its Illinois income tax return for TYE XX/XX/00, which amount it applied to the 2000 estimated Illinois income tax payments of COMPANY1.

COMPANY1 reported an overpayment of Illinois income tax in the amount of \$ on its 2000 Illinois income tax return, which amount COMPANY1 applied to its estimated Illinois income tax for 2001. COMPANY1 further reported an overpayment of \$ on its 2001 Illinois income tax return, which amount COMPANY1 applied to its 2002 estimated Illinois income tax. COMPANY1 further reported an overpayment of \$ on its 2002 Illinois income tax return, which amount COMPANY1 applied to its 2003 estimated Illinois income tax.<sup>1</sup>

COMPANY1 desires to participate in the amnesty program (the "Amnesty Program") pursuant to the Illinois Tax Delinquency Amnesty Act (P.A. 93-0026). In order for COMPANY1 to determine whether and for which year or years it will make an amnesty payment (the "Amnesty Payment"), COMPANY1 requires a private letter ruling confirming that the Amnesty Payment will not limit or cause to be reduced any of the COMPANY2 or COMPANY1 estimated tax overpayments described above that COMPANY2 and COMPANY1 applied to the succeeding year's estimated tax.

#### RULING REQUESTED

The Amnesty Payment will not limit or reduce or cause to be limited or reduced in any manner any of the following: (i) the overpayment in the amount of \$ that COMPANY2 reported in its 1999 Illinois income tax return and applied to its 2000 estimated tax; (ii) the overpayment in the amount of \$ that COMPANY2 reported in its TYE XX/XX/00 Illinois income tax return and applied to COMPANY1's 2000 estimated tax; (iii) the overpayment in the amount of \$ that COMPANY1 reported in its 2000 Illinois income tax return and applied to its 2001 estimated tax; (iv) the overpayment in the amount of \$ that COMPANY1 reported on its 2001 Illinois income tax return and applied to its 2002 estimated tax and (v) the overpayment in the amount of \$ that COMPANY1 reported in its 2002 Illinois income tax return and applied to its 2003 estimated tax.

#### ANALYSIS

At issue is whether the overpayment made in 1999, and carried forward each year to 2003 as a credit to estimated income tax, could be treated as an outstanding claim for refund of Illinois income tax in an amnesty year and thus eliminated.<sup>2</sup> As described below, treating any of COMPANY2's or COMPANY1's overpayments described above as an outstanding refund claim rather than as applied to the subsequent years' estimated tax would be contrary to the Department's express regulations and would not be allowable.

Pursuant to section 909(a) of the IITA, 86 Ill. Adm. Code ("Reg.") section 100.9400(b) provides:

An individual or corporate taxpayer by filing a return for the taxable year using the appropriate form and checking the appropriate box thereon in accord with the instructions *shall* have the amount of any overpayment or portion thereof credited thereafter against his estimated tax liability for the next succeeding year. (Emphasis supplied.)

This regulation expressly requires the Department to credit to the succeeding taxable year an overpayment reported on an original return in which the taxpayer makes such request by checking the appropriate box. Because each of the above overpayments was properly identified on Line 6a of each relevant year's Form IL-1120 filed by COMPANY2 or COMPANY1 as an overpayment to be credited to the succeeding year's estimated tax, the Department may not treat any such overpayment as an outstanding claim for refund that can be eliminated or reduced by reason of COMPANY1's

participation in the Amnesty Program.

#### PROCEDURAL STATEMENTS

##### Pending Audit or Litigation

The taxpayer has no audit, litigation, protest or refund claim pending with the Department with respect to the subject of this ruling request.<sup>3</sup> A complete list of audits and litigation will be provided upon request, although none pertain directly to the subject of this ruling request.

##### The Department Has Not Previously Ruled

To the best knowledge of both the taxpayer and of the undersigned, the Department has not previously ruled on the same or a similar issue for the taxpayer or a predecessor, nor has the taxpayer or any representative previously submitted the same or a similar issue to the Department but withdrawn it before a letter ruling was issued.

##### Power of Attorney

A power of attorney authorizing the undersigned to represent the Taxpayer in this matter is attached.

#### **Ruling**

Section 909(b) of the Illinois Income Tax Act (35 ILCS 5/909) provides:

The Department may prescribe regulations providing for the crediting against the estimated tax for any taxable year of the amount determined by the taxpayer or the Department to be an overpayment of the tax imposed by this Act for a preceding taxable year.

Pursuant to this statutory authority, the Department has adopted 86 Ill. Admin. Code Section 100.9400(d)(2), which provides:

Notwithstanding any other provision of this section, if a taxpayer elects on his return for the taxable year to have all or part of any overpayment shown on such return applied as an estimated tax payment for the succeeding taxable year, no interest shall be allowed on such portion of the overpayment so credited and such amount shall be applied as a payment on account of the estimated tax for such succeeding year or the installments thereof.

The rule is silent on the issue of whether the Department or the taxpayer may modify or revoke an election properly made under this section. However, the use of the mandatory phrase "shall be applied according to that election" strongly suggests that a properly-made election cannot be rescinded. This regulation was adopted pursuant to an explicit direction of the General Assembly that the statute would be implemented by rulemaking. The unqualified use of the word "shall," coupled with the absence of any exception in the regulation, appears to preclude the Department or

the taxpayer from reclassifying an overpayment that has been applied against an estimated tax liability as a de facto claim for a refund.

This conclusion is consistent with the federal practice in situations where the taxpayer has elected to apply a reported overpayment against its estimated tax liability for the subsequent year, and the Internal Revenue Service subsequently determines a deficiency for the return year. In those cases, the dispute has always been over the date on which the overpayment on the return should be deemed to have been repaid to the taxpayer, creating a deficiency on which interest begins to accrue. Neither the Internal Revenue Service nor the taxpayer has attempted in any of these cases to modify or eliminate the amount that was credited against the subsequent year's estimated tax liability pursuant to the original election. See, for example, *Avon Products, Inc. v. United States*, 588 F.2d 342 (2d Cir. 1978) and *May Department Stores Co. v. United States*, 36 Fed. Cl. 680 (1996). The historical practice of the Illinois Department of Revenue is consistent with the federal practice described in these cases.

Accordingly, the full amount of each of the overpayments reported by COMPANY1 or COMPANY2 on an original return and which COMPANY1 or COMPANY2 elected to have applied to the estimated tax liability for the subsequent year, as described in your representation of facts, shall continue to be treated as a payment of estimated tax consistent with the taxpayer's election.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

Very truly yours,

Paul Caselton  
Deputy General Counsel -- Income Tax

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<sup>1</sup> COMPANY1's 2002 Illinois income tax return was filed on October 14, 2003.

<sup>2</sup> Amnesty Program emergency regulations state that, in general, a taxpayer may not claim a refund of the amounts paid under amnesty. 86 Ill. Adm. Code 521.105(c).

<sup>3</sup> In fact, COMPANY1 asked the Department to audit its 2000 and 2001 Illinois income tax returns prior to November 17, 2003, and the Department replied that it did not currently have the resources to conduct the audit.